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IN THE HIGH COURT OF JUDICATURE AT BILASPUR (CHH.G.)

CRIMINAL APPEAL NO. 645 /2001.

APPELLANT ACCUSED (In custody)	Shahdeo son of Rupoo Madiya aged 35 years, cultivator, resident of village Guriya P.S. Bhanpuri District Bastar (Chhattisgarh)

VERSUS

RESPONDENT PROSECUTION	State of Chhattisgarh Through: P.S. Bhanpuri Distt. Bastar

8752
Filed on 24-7-2001
by Shri Manoj Kumar Nishad Advocate
R. to AR

APPEAL UNDER SECTION 374(2) CR.P.CODE, 1973

CONVICTION	SENTENCE
U/s 302 I.P.C.	Imprisonment for life , without any sentence of fine.

XI-HC-78

(28)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक (Cr. A. No. 645/2001 ..... **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DB: HON'BLE SHRI L.C. BHADOO AND
HON'BLE SHRI DHIRENDRA MISHRA, JJ

Criminal Appeal No. 645/2001

Appellant : Sahdeo

Versus

Respondent : State of Chhattisgarh

Shri Suresh Pandey, Advocate for the appellant.

Shri U.N.S. Deo, Addl. Public Prosecutor for the State.

ORAL JUDGMENT

(9-11-2006)

Per L.C. Bhadoo, J

Appellant Sahdeo has preferred this appeal questioning the legality and correctness of the judgment of conviction and order of sentence dated 21-3-2001 passed by the learned Sessions Judge, Bastar at Jagdalpur in Sessions Trial No. 240/99 whereby the learned Sessions Judge after holding accused-appellant guilty for commission of offence punishable under Section 302 of I.P.C., sentenced him to undergo imprisonment for life.

P.T.O.

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr.A. NO. 645/2001 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 2	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

2. Case of the prosecution in brief was that on 1-5-1999 some quarrel took place between Somnath- son of the accused Sahdeo and Guddu- son of the deceased Mahadeo in connection with plucking of mango. Sonadei intervened and separated them and she informed Ganesh about the incident. On the next day i.e. on 2nd May 1999 at about 7.00 a.m. Ganesh along with his uncle Mahadeo (since deceased) went to the house of Jadunath for convening Panchayat. Accused Sahdeo was already sitting in the house of Jadunath. When deceased Mahadeo informed Jadunath about the incident and said that Panchayat will be convened, on hearing this, accused Sahdeo took out a knife from the attire and attacked Mahadeo with the knife on his neck and he ran away. The deceased succumbed to the injuries on the spot. At about 11.00 a.m., the matter was reported to the Police Station, Bhanpuri by Ganesh where Assistant Sub Inspector Komal Sahu registered a First Information Report Ex. P-1 and left for the scene of occurrence. After giving notice to the Panchas vide Annexure P-15, he prepared the inquest report Ex. P-14 of the body of Mahadeo. The body was sent for post mortem examination to Hospital, Bhanpur where Dr. K.S. Paikra conducted post mortem and prepared the post mortem report Ex. P-5. He opined that the cause of death was shock due to excessive bleeding and the death was homicidal in nature. During police custody, the accused gave memorandum Ex. P-2 under Section 27 of the Evidence Act and in pursuance of that, he got recovered the

P.T.O.

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr.A. No. 645/2001 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 3	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

knife under Ex. P-3. After completion of investigation, charge sheet was filed against the accused in the Court of Chief Judicial Magistrate, Jagdalpur who in turn committed the case to the Sessions Judge, Jagdalpur.

3. The prosecution in order to establish the charge against the accused examined 8 witnesses. The statement of the accused was recorded under Section 313 of Cr.P.C. in which the accused denied the material appearing against him in the prosecution evidence and stated that the deceased attacked him in front of the Panchayat. He did not commit murder of Mahadeo. All the villagers are having animosity against him and in the night they were sitting near his house. They were holding axe and clubs. He examined 3 witnesses namely Jaiman, Mangli Bai and Sudru in his defence. The learned Sessions Judge after hearing the arguments of the counsel for respective parties and perusal of the record, convicted and sentenced the accused-appellant.

4. We have heard Shri Suresh Pandey, learned counsel on behalf of the appellant and Shri U.N.S. Deo, learned Addl. Public Prosecutor on behalf of the State.

5. Shri Pandey has not disputed the fact of homicidal death of Mahadeo. Apart from that, from the evidence of P.W. 1 Ganesh, P.W. 2 Jadunath and medical

P.T.O.

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr. A. No. 645/01 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

evidence of P.W. 5 K.S. Paikra, it is established that the death of Mahadeo was homicidal in nature.

6. So far as involvement of the appellant in commission of crime in question is concerned, Mr. Pandey argued that the incident happened all of a sudden in a heat of passion without any premeditation or preparation and the accused attacked the deceased only once, therefore, the offence against the accused does not travel beyond Section 304 Part II of I.P.C.

7. On the other hand, Mr. U.N.S. Deo supported the judgment of trial Court.

8. In order to appreciate the argument advanced by the learned counsel for the respective parties, we have perused the record. P.W. 1 Ganesh has categorically stated that on the previous day, son of the deceased and the son of the accused quarreled while they were plucking mangoes. Sonadei intervened and separated them. Somnath informed his father Sahdeo on which, Sahdeo gave beating to Sonadei. In the morning Mahadeo went to the house of Jadunath where accused Sahdeo was already sitting. Sahdeo took out the knife which was covered under the shawl and attacked the deceased on his neck. Mahadeo succumbed to the injuries on the spot. The matter was reported to the police under Ex. P-1. The evidence of P.W. 1 Ganesh has been corroborated by the P.W. 2 Jadunath who has stated that he is a

P.T.O.

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 5	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Village Patel and on the fateful day, Mahadeo and Ganesh came to his house in the early morning and they started quarrelling and in that process, Sahdeo attacked Mahadeo on his neck with a knife, as a result of which, Mahadeo succumbed to the injuries. P.W.5 Dr. K.S. Paikra has stated that he conducted the post mortem on the body of Mahadeo on 2nd May 1999. There was incised wound on the neck in the size of 1 ¼ x ½". The injury was sufficient in ordinary course of nature for causing death. The cause of death was excessive bleeding on account of cutting of artery and his report is Ex. P-5. Therefore, it is established Mahadeo died as a result of injury inflicted by the accused with knife and the same has been established by the evidence of witnesses P.W. 1 Ganesh, P.W. 2 Jadunath and medical evidence of P.W. 5 Dr. K.S. Paikra.

9. Coming to the point as to whether the act of the accused is covered under Exception 4 to Section 300 of I.P.C. it is to be seen that the act of the accused must be without premeditation in a sudden fight, in the heat of a passion upon a sudden quarrel and without the offenders having taken undue advantage or acted in a cruel or unusual manner. If we examine the evidence available on record, on the previous day, the son of the accused and the son of the deceased quarreled and in that respect some Panchayat was convened but the accused did not attend the Panchayat. On the next day morning, the deceased went to the house of Jadunath where the accused was

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr. A. No. 645/2001 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

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already sitting and there, as per the evidence of Jadunath, quarrel started and in that process, the accused took out a knife which was covered under the shawl and attacked the deceased on his neck. P.W. 1 Ganesh has stated that the accused was roaming in the night carrying arrow in his hand and on the next day when Mahadeo went to the house of Jadunath, the accused was already there having knife with him covered with the shawl and the accused Sahdeo attacked Mahadeo in his neck. Therefore, this conduct of the accused shows that the accused went to the house of Jadunath with preparation carrying knife with him and P.W. 1 Ganesh has further stated that after receiving the injury, Mahadeo started running, even then the accused chased him and when Mahadeo fell down, the accused left the scene saying that he is dead. This conduct shows that the accused went with preparation whereas the deceased was armless, therefore, the conduct of the accused as per the evidence of prosecution shows that the case of the accused does not fall under Exception 4 to Section 300 of I.P.C. Therefore, we do not find any illegality or infirmity in the judgment of the trial Court and the appeal is devoid of merit, the same is liable to be dismissed and it is hereby dismissed.

Sd/-
L.C.BHADOO
Judge

Sd/-
DHIRENDRA MISHRA
Judge

P.T.O.

Pathak 27.2.07